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No. 03-1543

Supreme Court, U.S.
FILED
SEP 1 - 2004
OFFICE OF THE CLERK

In The Supreme Court of the United States

RICHARD R. RICHARD, JR., on behalf of himself and all others similarly situated,

Petitioners,

v.

HOECHST CELANESE CHEMICAL GROUP, INC., SHELL OIL COMPANY d/b/a SHELL CHEMICAL COMPANY, HOECHST CELANESE CORPORATION, and E. I. DuPONT de NEMOURS & COMPANY,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITIONERS' REPLY BRIEF

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1. The *Rooker-Feldman* Doctrine

This Petition asks the Court to focus its attention on the *Rooker-Feldman* doctrine, which is widely applied and poorly understood. The lower courts, in attempting to delineate the doctrine's scope, have spawned a complex, confusing and frequently contradictory body of precedent. *Rooker-Feldman* is being used to block access to federal courts with no defined standards and virtually no guidance from this Court. There is no consistency among the circuits and the reasoning of opinions that grapple with the doctrine's complexity is often sparse and unhelpful. The doctrine is based on loose language in decisions that are now 81 and 21 years old – *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). In recent decades, there has been a tremendous transformation of federal litigation and increase in parallel cases in state and federal courts. It is time to assess the *Rooker-Feldman* doctrine and establish limits on it, something this Court alone can do. This case invites the Court to provide guidance and bring harmony to a confusing, inconsistent body of law that lower courts have extended well beyond what the Court has authorized and arguably beyond what any defensible rationale for the doctrine would support.

Petitioners ask the Court to set aside lower court decisions holding that the *Rooker-Feldman* doctrine prevents federal courts from considering evidence that prior state court class action judgments do not bind absent future class members because the judgments were obtained in violation of due process requirements and thus should not receive full faith and credit. The decisions below hold that district courts cannot even examine evidence that prior state settlements were obtained by

collusion and fraud on the court, failed to provide adequate notice, representation or other constitutionally mandated protection to future class members and therefore are not entitled to full faith and credit in federal court.

Respondents insist that no such due process violations took place in *Cox v. Shell Oil Co.*, No. 18,844 (Chancery Court, Obion County, Tenn. Nov. 17, 1995) (applicable to Respondents Shell and Celanese) and *Spencer v. Shell Oil Co.*, No. CV-94-047 (Ala. Cir. Ct., Greene County Nov. 17, 1995) (applicable to Respondent DuPont). Or that even if they did, *Cox* and *Spencer* are entitled to full faith and credit regardless of any evidence Petitioners proffer because the *Rooker-Feldman* doctrine does not allow lower federal courts to consider such evidence.

The record below contains no findings of fact since the district court dismissed Petitioners' suit on the pleadings. Neither the district court nor the Fifth Circuit evaluated the *Cox* and *Spencer* settlement documents that Respondents include as appendices to their briefs. And Petitioners' evidence impugning the integrity of the state proceedings was not considered at all. The courts below never learned, for example, that the total amount of disclosed and *undisclosed* fees paid in *Spencer* exceeded the benefits paid to the class as a whole. Nor did the courts below have a chance to consider the implication of this astonishing fact on the allegations of collusion and fraud on the court. If the allegations in Petitioners' complaint are true, which courts must accept *arguendo* in ruling on Rule 12(b) motions, then *Cox* and *Spencer* are not entitled to full faith and credit under state or federal law. The district court, however, dismissed this case without giving any consideration whatever to the full faith and credit issue.

This case is significant because it holds that *Rooker-Feldman* trumps traditional requirements for due process and full faith and credit. In recent years, the *Rooker-Feldman* doctrine "has emerged as perhaps the primary docket-clearing workhorse for the federal courts." Susan Bandes, *The* Rooker-Feldman *Doctrine: Evaluating Its Jurisdictional Status*, 74 NOTRE DAME L. REV. 1175, 1175 (1999). What is most troubling about the reliance of lower federal courts on this doctrine is the disjunction between its heavy use and the lack of attention the Court has given to it. Its rise and rapid expansion has been almost entirely below the radar. This Court alone can determine if the scope of the *Rooker-Feldman* doctrine is or should be so sweeping.

2. Availability of Equitable Relief Under 18 U.S.C. § 1964.

This Court is also the final arbiter of another important issue raised by this case – whether 18 U.S.C. § 1964 allows private plaintiffs to seek equitable remedies against RICO wrongdoers. There is a conflict among the circuits over what the language of the statute means. *Religious Tech. Center v. Wollersheim*, 796 F.2d 1076 (9th Cir. 1986), *cert. denied*, 479 U.S. 1103 (1987) and successor cases in the Ninth Circuit interpret Section 1964 to deny equitable relief to private plaintiffs. These decisions, like the Fifth Circuit's decision, squarely conflict with the Seventh Circuit's analysis, which says the clear language of the statute authorizes equitable relief to private plaintiffs. *Nat'l Org. for Women, Inc. v. Scheidler,* 267 F.3d 687 (7th Cir. 2001), *rev'd on other grounds*, 537 U.S. 393 (2003). The Court recently granted certiorari in *Scheidler* to resolve this question but never reached it. The issue is

presented again in this case and should be resolved now to clarify the law.

3. State Action

Only this Court can resolve the conflict between circuits on the question of whether the "innocent agent" doctrine codified as 18 U.S.C. § 2(b) provides requisite state action to support Section 1983 and due process claims and also determine whether the doctrine applies to civil cases. The doctrine's application to this case was plainly misunderstood by the Fifth Circuit panel, who construed it as an admission that the state court judge was "innocent" and therefore no state action could exist. (Petition App. at 15.) However, *United States v. Lester*, 363 F.2d 369 (2d Cir. 1966) and the cases following it apply the innocent agent doctrine to find state action in regard to violation of 18 U.S.C. § 242, the criminal analogue of Section 1983. The color-of-state-law requirement of both these statutes was intended to be read "coextensively." *Dennis v. Sparks*, 449 U.S. 24, 29 n.5 (1980). It falls on this Court to determine if there is state action when a private actor uses fraud and duplicity to dupe a state court judge into approving an unethical and constitutionally defective settlement that the government applies to deprive Petitioners of their right to sue Respondents for damages.

CONCLUSION

For the reasons noted above and discussed in the Petition, the Court should grant the Petition for writ of certiorari.

Respectfully submitted,

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